LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 4 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 430

ARTHUR L. COX, Successor Guardian of
AQUILLA REDDITT,
Appellant,

vs.

STATE OF TENNESSEE, by and through Its
Attorney General and Reporter,
GEORGE F. McCANLESS
and
CENTRAL STATE HOSPITAL, a Corporation, by and
through DR. O. S. HAUK, Its Superintendent,
Appellees.

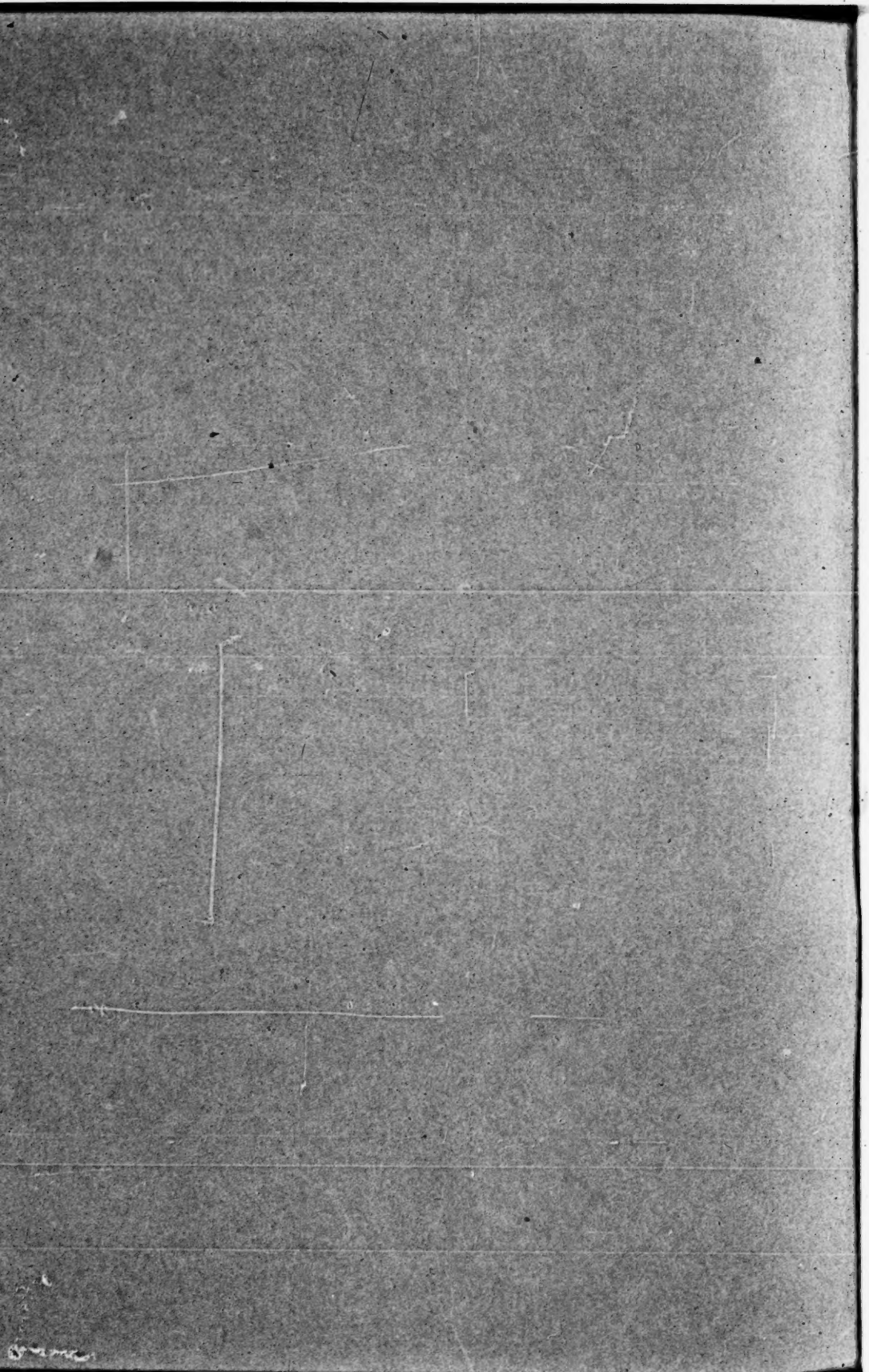
ON APPEAL FROM THE SUPREME COURT
OF TENNESSEE

JURISDICTIONAL STATEMENT

THOMAS F. TURLEY, JR.
Sterick Building
Memphis, Tennessee 38103
Counsel for Appellant

ROBERT M. JOHNSON
and
CANADA, RUSSELL & TURNER
Memphis, Tennessee
Of Counsel

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-3030



INDEX

Opinion Below 2

Jurisdiction 2

Questions Presented 3

Statutes Involved 3

Statement 3

The Questions Are Substantial 5

1. State statutes such as those here involved effect an allocation of pre-trial detention expenses which invidiously discriminates against the insane defendant 8

2. The statutes involved impose a cruel and unusual punishment upon insane defendants 10

3. The statutes involved permit property of an insane defendant to be taken for a public purpose without just compensation 10

4. The statutes involved attach an unconstitutional condition to the grant of one's due process right not to be tried for a crime unless capable of assisting in one's own defense 11

5. The statutes involved impose a penalty upon insane defendants without an adjudication of guilt, contrary to due process of law 12

Appendix A—Copies of Opinion and Judgments Below A1

1. Chancery Court Decree A1

2. Supreme Court Decree A2

3. Opinion of the Tennessee Supreme Court A3

Appendix B—Text of Statutes A16

TABLE OF CASES

Board of Administration v. *Miles*, 278 Ill. 174, 115 N.E. 841 (1917) 6

Carter v. *People of State of Illinois*, 329 U.S. 173, 67 S. Ct. 216, 91 L.Ed. 172 (1946) 11

Cogburn v. *State*, 198 Tenn. 431, 281 S.W.2d 38 (1955) .. 8

Covey v. *Town of Somers*, 351 U.S. 141, 76 S. Ct. 724, 100 L.Ed 1021 (1956) 11

Cox v. *State*, ... Tenn. ....., 439 S.W.2d 267 (1969) 4

Dahnke-Walker Milling Co. v. *Bondurant*, 257 U.S. 282, 42 S. Ct. 106, 66 L.Ed. 239 (1921) 2-3

Department of Mental Hygiene v. *Kirchner*, 62 Cal.2d 586, 43 Cal. Rptr. 329, 400 P.2d 231, 20 A.L.R.3d 361 (1964) 5

Department of Mental Hygiene v. *Kirchner*, 380 U.S. 194, 85 S. Ct. 871, 13 L.Ed.2d 753 (1965) 5

Department of Mental Hygiene v. *Hawley*, 59 Cal.2d 247, 28 Cal. Rptr. 718 (1963) 6

Department of Public Welfare v. *Haas*, 15 Ill.2d 204, 154 N.E.2d 265 (1958) 6

Dupree v. *State*, (Tex. Civ. App.) 275 S.W.2d 556 (1955) 6

Dusky v. *United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L.Ed.2d 824 (1960) 11

Frost v. *Corporation Commission*, 278 U.S. 515, 49 S. Ct. 235, 73 L.Ed. 483 (1929) 9

Frost & Frost Trucking Co. v. *Railroad Commission*, 271 U.S. 583, 46 S. Ct. 605, 70 L.Ed. 1101 (1926) 11

Giaccio v. *State of Pennsylvania*, 382 U.S. 399, 86 S. Ct. 518, 15 L.Ed.2d 447 (1966) 3, 7, 12

Greenwood v. *United States*, 350 U.S. 366, 76 S. Ct. 410, 100 L.Ed. 412 (1956) 7

Guardianship of Hicks, 228 Cal. App.2d 629, 39 Cal. Rptr. 698 (1966) 6

Kough v. *Hoehler*, 413 Ill. 409, 109 N.E.2d 177 (1952) .. 6
La Crosse Tel. Corp. v. *Wisconsin Board*, 336 U.S. 18, 69 S. Ct. 379, 93 L.Ed. 463 (1949) 2
Lambert v. *People of State of California*, 355 U.S. 225, 78 S. Ct. 240, 2 L.Ed2d 228 (1957) 7, 10, 11
Largent v. *State of Texas*, 318 U.S. 418, 63 S. Ct. 667, 87 L.Ed. 873 (1943) 2
Leland v. *State of Oregon*, 343 U.S. 790, 72 S. Ct. 1002, 96 L.Ed. 1302 (1952) 7, 9
Levy v. *Louisiana*, 391 U.S. 68, 88 S. Ct. 1509, 20 L.Ed.2d 436 (1968) 9
Loving v. *Commonwealth of Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L.Ed.2d 1010 (1967) 9
Lynch v. *Overholser*, 369 U.S. 705, 82 S. Ct. 1063, 8 L.Ed.2d 211 (1962) 7, 9
Marsh v. *State of Alabama*, 326 U.S. 501, 66 S. Ct. 276, 90 L.Ed. 265 (1946) 12
McKenna v. *Roberts County*, 72 S.D. 250, 32 N.W.2d 687 (1948) 6
McLaughlin v. *State of Florida*, 379 U.S. 184, 85 S. Ct. 283, 13 L.Ed.2d 222 (1964) 9
Michigan Public Utilities Commission v. *Duke*, 266 U.S. 570, 45 S. Ct. 191, 69 L.Ed. 445 (1925) 11
Re Preston's Estate, 243 Cal. App.2d 803, 52 Cal. Rptr. 790 (1966) 6
Robinson v. *State of California*, 370 U.S. 660, 82 S. Ct. 1417, 8 L.Ed.2d 758 (1962) 2, 7, 10
Schroer v. *Central Kentucky Asylum for the Insane*, 113 Ky. 288, 68 S.W. 150 (1902) 6
Shelley v. *Kramer*, 334 U.S. 1, 68 S. Ct. 836, 92 L.Ed. 1161 (1948) 9
Smith v. *Cahoon*, 283 U.S. 553, 51 S. Ct. 582, 75 L.Ed. 1264 (1931) 9
Specht v. *Patterson*, 386 U.S. 605, 87 S. Ct. 1209, 18 L.Ed.2d 326 (1967) 7

State Hospital at Raleigh v. *Security National Bank*, 207 N.C. 697, 178 S.E. 487 (1935), *cert. denied* 295 U.S. 761, 55 S. Ct. 921, 79 L.Ed. 1704 (1935) 6

Quaker City Cab Co. v. *Commonwealth of Pennsylvania*, 277 U.S. 389, 48 S. Ct. 553, 72 L.Ed. 927 (1928) 9

STATUTES

Tennessee Code Annotated—

Section 33-631 ..... 4, A16
Section 33-701 ..... 9, A17
Section 33-706 ..... 4, A18
Section 40-3304 ..... 8, A19
Section 40-3320 ..... 8, A19
Section 40-3325 ..... 8, A19
Section 40-3332 ..... 8, A19
Section 40-3335 ..... 8, A20
Section 40-3336 ..... 8, A20

28 U.S.C. § 1257(a) 2

ANNOTATION

Constitutionality of Statute Imposing Liability upon Estate or Relatives of Insane Persons for His Support in Asylum, 20 A.L.R.3d 363-396 (1968) 5

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. _____

ARTHUR L. COX, Successor Guardian of
AQUILLA REDDITT,
Appellant,

vs.

STATE OF TENNESSEE, by and through Its
Attorney General and Reporter,
GEORGE F. McCANLESS

and

CENTRAL STATE HOSPITAL, a Corporation, by and
through DR. O. S. HAUK, Its Superintendent,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF TENNESSEE

JURISDICTIONAL STATEMENT

Appellant appeals from the final decree of the Supreme Court of Tennessee, entered on April 4, 1969, awarding the State of Tennessee the sum of $22,351.11, plus costs and interest, as reimbursement for the State's expenses in holding appellant's ward for trial since 1924 on an in-

dictment for first degree murder, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW

The opinion of the Supreme Court of Tennessee has not yet been officially reported, but may be found at 439 S.W.2d 267. The trial court rendered no opinion. Copies of the opinion and final decrees are attached hereto as Appendix A.

JURISDICTION

The State of Tennessee instituted this suit in 1961 pursuant to Sections 16 and 18 of Chapter 17, Acts of 1919 (repealed 1965), to recover the expense of holding appellant's ward for trial on a murder charge since 1924. The validity of said statutes under the Constitution of the United States was timely challenged by appellant, and was expressly upheld by the Tennessee Supreme Court. The Final Decree of said court was entered on April 4, 1969, and notice of appeal was filed in that court on June 26, 1969. Appellant applied to the Clerk of this Court on July 3, 1969, for an extension of time in which to docket the appeal. Mr. Circuit Justice Stewart, by order dated July 7, 1969, extended said time to and including August 4, 1969. The jurisdiction of the Supreme Court to review this decision by appeal is conferred by Title 28, United States Code, Section 1257(a), and is sustained by the following decisions: *Robinson* v. *State of California*, 370 U.S. 660, 82 S. Ct. 1417, 8 L.Ed.2d 758 (1962); *La Crosse Tel. Corp.* v. *Wisconsin Board*, 336 U.S. 18, 69 S. Ct. 379, 93 L.Ed. 463 (1949); *Largent* v. *State of Texas*, 318 U.S. 418, 63 S. Ct. 667, 87 L.Ed. 873 (1943); *Dahnke-Walker Milling Co.* v. *Bon-*

durant, 257 U.S. 282, 42 S. Ct. 106, 66 L.Ed. 239 (1921); *Giaccio* v. *State of Pennsylvania*, 382 U.S. 399, 86 S. Ct. 518, 15 L.Ed.2d 447 (1966).

QUESTIONS PRESENTED

1. Where the State of Tennessee has incarcerated a person continuously since 1924 under a pending indictment for first degree murder, may it now recover from him the expense of his incarceration, pursuant to State statutes permitting such recovery, or are such statutes invalid under the due process, equal protection, and cruel and unusual punishment clauses of the Constitution of the United States?

2. Has appellant been denied any other federal right, whether or not such denial is capable in itself of being brought here on appeal?

STATUTES INVOLVED

Sections 16 and 18 of Chapter 17, Acts of 1919 (repealed 1965), are set forth in Appendix B hereto.

STATEMENT

On October 14, 1924, Aquilla Redditt was indicted by the grand jury of Shelby County, Tennessee, for first degree murder. Arraigned the following day, he pleaded present insanity upon the ground that he was incapable of assisting counsel in his own defense, was so found by a jury, and was ordered by the court to be confined in a state mental hospital until found sane and delivered over to the attorney general for trial. The court issued a *mittimus* for the commitment of the prisoner, which was duly executed. Aquilla Redditt has remained continuously incarcerated for the past forty-four years, his insanity being congenital, complete, and beyond any known treatment,

pursuant to the writ of *mittimus* and the still-pending murder indictment.

On May 11, 1961, the State of Tennessee sued its prisoner, Aquilla Redditt, for the cost of incarcerating him over the intervening decades. The State's cause of action was founded upon Acts 1919, chapter 17, sections 16 and 18 (repealed 1965) (T.C.A. 33-631 and 706), which authorized the State to enforce reimbursement from an insane defendant's estate for his maintenance pending trial. (The complete text of these statutes will be found in Appendix B.)

Appellant, successor guardian of Aquilla Redditt, interposed various defenses, including the validity of said statutes under the United States Constitution. (Answer of Defendant, p. 3.) The case was tried on stipulations of fact, and resulted in an initial decree awarding the State $20,253.77. (The decree is set out in Appendix A.)

Both parties appealed directly to the Tennessee Supreme Court, appellant again urging his federal rights. That court explicitly sustained the validity of the state statutes under the Constitution of the United States. *Cox v. State,* ..... Tenn. ....., 439 S.W.2d 267, 269, 270-273 (1969). (The opinion is reprinted in Appendix A.) The court ruled that the involuntary incarceration of an accused incapable of standing trial, without any determination of necessity of confinement, does not violate due process; that incarceration in a hospital pending trial is not penal in character; that appellant's ward is not being punished without a trial; that the State could constitutionally exact payment from appellant's ward despite not requiring payment from convicts who become insane while in prison; and that the State could constitutionally exact reimbursement from appellant's ward for decades of involuntary incarceration not shown to be necessary for the safety of the public nor

of benefit to the ward. The Court entered a final decree awarding the State $22,351.11. (The decree is reprinted in Appendix A.)

THE QUESTIONS ARE SUBSTANTIAL

The issues involved in this appeal are analogous to those raised in *Department of Mental Hygiene* v. *Kirchner*, 380 U.S. 194, 85 S. Ct. 871, 13 L.Ed.2d 753 (1965), which involved the impact of reimbursement statutes upon the relatives, rather than the estate, of the insane person. This Court, in *Kirchner*, declined to reach the merits because of the probable existence of an adequate state ground for the State decision, a probability which became a certainty on remand. (*See, Department of Mental Hygiene* v. *Kirchner*, 62 Cal.2d 586, 43 Cal. Rptr. 329, 400 P.2d 321, 20 A.L.R.3d 361 (1964).) Because of the importance of, and widespread interest in, the validity of such statutes, however, this Court vacated the judgment and remanded the case, in contrast to its normal practice of dismissing the writ of certiorari as improvidently granted. 380 U.S. 194, 200-01. The decision sought to be reviewed herein does not rest upon an adequate State ground, but turns solely upon the validity of such state statutes under the federal Constitution.

Decisions regarding the validity of such statutes under both state and federal constitutional provisions are already numerous and are increasing in frequency. See, Annotation: Constitutionality of Statute Imposing Liability upon Estate or Relatives of Insane Persons for His Support in Asylum, 20 A.L.R.3d 363-396 (1968). The decided state cases are in direct conflict, and particularly so with respect to the validity, solely under the federal constitution, of such statutes as applied to the estate (as distinct from the relatives) of an insane person. Validity

was sustained in the following cases: *Guardianship of Hicks,* 228 Cal. App.2d 629, 39 Cal. Rptr. 698 (1966); *Re Preston's Estate,* 243 Cal. App.2d 803, 52 Cal. Rptr. 790 (1966); *Kough* v. *Hoehler,* 413 Ill. 409, 109 N.E.2d 177 (1952); *Dupree* v. *State,* (Tex. Civ. App.) 275 S.W.2d 556 (1955); *McKenna* v. *Roberts County,* 72 S.D. 250, 32 N.W.2d 687 (1948); and *State Hospital at Raleigh* v. *Security National Bank,* 207 N.C. 697, 178 S.E. 487 (1935), *cert. denied* 295 U.S. 761, 55 S. Ct. 921, 79 L.Ed. 1704 (1935). Validity was denied in the following cases: *Board of Administration* v. *Miles,* 278 Ill. 174, 115 N.E. 841 (1917); *Schroer* v. *Central Kentucky Asylum for the Insane,* 113 Ky. 288, 68 S.W. 150 (1902); and *Department of Public Welfare* v. *Haas,* 15 Ill.2d 204, 154 N.E.2d 265 (1958).

There are two cases which deal specifically with the impact of such statutes upon insane persons held for trial. *Kough* v. *Hoehler, supra,* held that exempting such persons from the reimbursement obligation did not effect an unconstitutional discrimination against those committed under proper civil process. *Department of Mental Hygiene* v. *Hawley,* 59 Cal.2d 247, 28 Cal. Rptr. 718 (1963), held that enforced reimbursement for detention of an insane accused was a penal sanction which could not be exacted from his relatives under the state Constitution. 28 Cal. Rptr. at 724.

The impact of such statutes upon insane persons in general, and those accused of crime in particular, is widespread, continuing, and frequent. Such statutes present important questions of federal constitutional law which have not been, but should be, settled by this Court. The issues here involved are important to the administration of their criminal laws by the several states. The scope of permissible State action with respect to persons accused of crime has been often before this Court in recent years. This appeal involves the power of a State to take the prop-

erty of such persons, as well as their liberty, prior to any adjudication of guilt. The Constitutional issues involved in such a taking were recently before this Court in *Giaccio* v. *State of Pennsylvania,* 382 U.S. 399, 86 S. Ct. 518, 15 L.Ed.2d 447 (1966), which held unconstitutional a state statute permitting a jury in a criminal case to assess costs against an acquitted defendant. The majority opinion held the statute to be void for vagueness. Two Justices concurred in the result on the ground that the imposition of a financial penalty without an adjudication of guilt was contrary to due process of law. 382 U.S. at 405.

This appeal also presents important Constitutional questions concerning the status of the insane person under the criminal law and the extent to which illness alone may be the ground for punitive action by the State, questions also frequently and recently before this Court. See *Robinson* v. *California,* 370 U.S. 660, 82 S. Ct. 1417, 8 L.Ed.2d 758 (1962); *Lynch* v. *Overholser,* 369 U.S. 705, 82 S. Ct. 1063, 8 L.Ed.2d 211 (1962); *Greenwood* v. *United States,* 350 U.S. 366, 76 S. Ct. 410, 100 L.Ed. 412 (1956); *Leland* v. *State of Oregon,* 343 U.S. 790, 72 S. Ct. 1002, 96 L.Ed. 1302 (1952); *Lambert* v. *People of State of California,* 355 U.S. 225, 78 S. Ct. 240, 2 L.Ed.2d 228 (1957); *Specht* v. *Patterson,* 386 U.S. 605, 87 S. Ct. 1209, 18 L.Ed.2d 326 (1967).

Aquilla Redditt was caught in the tangled web of a statutory scheme for dealing with insane defendants which deprives him of due process of law and equal protection of the law, and subjects him to cruel and unusual punishment. Redditt claimed, and was found, to be mentally incapable of assisting in his own defense to a murder charge. No charge, hearing, verdict or adjudication ever dealt with the question of whether or not he was potentially dangerous to himself or others unless detained.

Nevertheless, he was involuntarily incarcerated under criminal process, an order which may not be appealed. *Cogburn* v. *State*, 198 Tenn. 431, 281 S.W.2d 38 (1955). Nor was the fact that the State labels his place of incarceration a "hospital" of any benefit to him since, by stipulation, his condition was and is "beyond any known treatment." (Stipulation No. 1, Para. ix.) Moreover, when incarcerated he was an indigent and was dealt with as such by the State, so that he was incapable of making bail had any been set. Thus, Aquilla Redditt, since 1924 and until the day he dies, remains charged with murder, remains involuntarily held for trial under an order which can not be appealed, and remains deprived of his freedom; not for treatment, and not for the protection of society or himself, but simply and solely because he was and is both insane and charged with murder.

1. State statutes such as those here involved effect an allocation of pre-trial detention expenses which invidiously discriminates against the insane defendant.

It has long been the law of Tennessee that the cost of maintaining prisoners awaiting trial for a felony is borne by the State. Acts 1891 (E.S.), ch. 22, §3 and Acts 1898, ch. 138, §1 (T.C.A. 40-3320 and 3335). The defendant is required to reimburse the State for such costs *only* upon conviction. Code 1858, §§5578, 5583 and 5585 (T.C.A. 40-3304, 3325, 3332 and 3336). The State's liability is final, with no right to reimbursement, when the action is abated by the death of the defendant or by a nolle prosequi (T.C.A. 40-3332). (These statutes are all set out in Appendix B.)

Aquilla Redditt has never been determined to be a danger to himself or others if left at large. It is stipulated that no form of treatment will ever be beneficial to him.

In such circumstances, civil commitment would be a violation of due process. *Lynch* v. *Overholser, supra*; *Specht* v. *Patterson, supra.* The sole purpose for his detention is to await trial on the still-pending murder charge, as is evidenced both by the legal process under which he is held and by the State's failure to dismiss its hopeless criminal action against him and to commit him under proper civil process, *if warranted.* Sane defendants awaiting trial are not liable for such expenses unless and until proven guilty. No valid reason is, or could be, given for exacting such expenses from the insane, particularly one who is by stipulation "beyond any known treatment." (Since 1965, Tennessee treats sane and insane defendants alike for the first thirty days, but apparently not thereafter; see Acts 1965, Ch. 38, §41 (T.C.A. 33-701), set out in Appendix B.) The discrimination under the statutes involved resulted simply because the State chooses to incarcerate the one class in an institution which it labels "hospital" and the other in a "penitentiary." The classifications upon which this discrimination was based bear no conceivable relationship to valid legislative purposes. The statutes involved invidiously and unconstitutionally discriminate against persons who are both insane and accused of crime. *Frost* v. *Corporation Commission,* 278 U.S. 515, 49 S. Ct. 235, 73 L.Ed. 483 (1929); *Smith* v. *Cahoon,* 283 U.S. 553, 51 S. Ct. 582, 75 L.Ed. 1264 (1931); *Quaker City Cab Co.* v. *Commonwealth of Pennsylvania,* 277 U.S. 389, 48 S. Ct. 553, 72 L.Ed. 927 (1928); *Shelley* v. *Kramer,* 334 U.S. 1, 68 S. Ct. 836, 92 L.Ed. 1161 (1948); *McLaughlin* v. *State of Florida,* 379 U.S. 184, 85 S. Ct. 283, 13 L.Ed.2d 222 (1964); *Loving* v. *Commonwealth of Virginia,* 388 U.S. 1, 87 S. Ct. 1817, 18 L.Ed.2d 1010 (1967); *Levy* v. *Louisiana,* 391 U.S. 68, 88 S. Ct. 1509, 20 L.Ed.2d 436 (1968).

2. The statutes involved impose a cruel and unusual punishment upon insane defendants.

Persons accused of crime by the State of Tennessee are subject to deprivation of liberty pending trial, as are criminal defendants in every other state. However, Tennessee imposed an additional punishment, a cruel and unusual punishment, upon defendants who, in addition, suffer the status of being insane. The sane defendant must pay the expenses of his pre-trial incarceration only upon conviction. Under the statutes involved, the insane defendant, solely because of his status as such, suffers the added penalty of appropriation of his estate for payment of such expenses. The estate of the sane defendant whose prosecution abates by his death, is left intact. The estate of the insane defendant who dies before trial, is charged with the expenses of his incarceration. In short, the insane defendant is economically punished solely because of his insanity, and not because of anything which he has done. Such a penalty, based on status merely, constitutes cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments to the Constitution of the United States. *Robinson* v. *State of California, supra*; *Lambert* v. *California, supra.*

3. The statutes involved permit property of an insane defendant to be taken for a public purpose without just compensation.

The State, pursuant to the statutes here involved, has taken Aquilla Redditt's property in the amount of $22,351.11 for the purpose of financing a public institution. The Fifth and Fourteenth Amendments to the federal Constitution require "just compensation" for such a taking. The State justifies this taking as reimbursement for its expenses in depriving Aquilla Redditt of his liberty for several decades. Aquilla Redditt never asked to be indicted, nor to be incarcerated. He merely claimed the right he shared with all others not to be placed on trial for murder when he

was mentally incompetent to assist in his own defense. As a consequence thereof, the State has held him ever since under criminal process, for no other purpose than to have him available for trial. This deprivation is the *quid pro quo* for taking his property. Appellant submits that it is neither just nor is it compensation. The State has deprived him of his liberty, forcibly and unjustly, without benefit to him. Such is not fair value for the property taken. Accordingly, the statutes permitting the taking violate the Fourteenth Amendment's prohibition against deprivation of property without due process of law. *Lambert* v. *California, supra*; *Covey* v. *Town of Somers*, 351 U.S. 141, 76 S. Ct. 724, 100 L.Ed. 1021 (1956).

4. The statutes involved attach an unconstitutional condition to the grant of one's due process right not to be tried for a crime unless capable of assisting in one's own defense.

Putting a person to trial for a felony who is absent mentally would be as fundamentally unfair as trying him *in absentia*. Due process requires a full and fair opportunity to meet an accusation personally, as well as by counsel, an opportunity not available to one mentally incapable of assisting in his own defense. *Carter* v. *People of State of Illinois*, 329 U.S. 173, 67 S. Ct. 216, 91 L.Ed. 172 (1946); *Dusky* v. *United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L.Ed. 2d 824 (1960). The defendant who claimed the benefit of this right was granted it only upon the condition, inherent in the statutes involved, that he become liable for the State's expenses in holding him for trial while incompetent. This condition, not imposed upon sane defendants who seek continuances for other reasons, had no rational purpose. It places a financial penalty upon pleading incompetency. Accordingly, the statutes do not conform to the requirements of Due Process. *Frost & Frost Trucking Co.* v. *Railroad Commission*, 271 U.S. 583, 46 S. Ct. 605, 70 L.Ed. 1101 (1926); *Michigan Public Utilities Commission* v. *Duke*, 266 U.S. 570, 45 S. Ct. 191, 69 L.Ed. 445 (1925);

Marsh v. *State of Alabama*, 326 U.S. 501, 66 S. Ct. 276, 90 L.Ed. 265 (1946).

5. The statutes involved impose a penalty upon insane defendants without an adjudication of guilt, contrary to due process of law.

It is fundamental to our jurisprudence that persons charged with crime are presumed innocent until proven guilty. Aquilla Redditt is presumptively innocent of any crime, and will so remain until the day he dies. Nevertheless, the State of Tennessee, through the statutes involved, seeks to exact a financial penalty from him, based solely upon compulsory incarceration under criminal process. Imposition of a penalty in these circumstances violates due process of law. *Giaccio* v. *State of Pennsylvania*, *supra* (concurring opinions, 382 U.S. at 405).

It is submitted that the decision of the Tennessee Supreme Court fails to recognize the effect of the statutes involved upon insane defendants charged with crime, that it misconstrues the applicable prohibitions of the federal Constitution, and that it permits the state to deprive appellant's ward of property unconstitutionally. We believe that the questions presented by this appeal are so substantial and of such public importance as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

THOMAS F. TURLEY, JR.
Sterick Building
Memphis, Tennessee 38103
Counsel for Appellant

ROBERT M. JOHNSON
and
CANADA, RUSSELL & TURNER
Memphis, Tennessee
Of Counsel

APPENDIX

APPENDIX A

Copies of Opinion and Judgments Below
1. Chancery Court Decree

This cause came on this day to be further heard upon the pleadings and the six stipulations on file, included in which is the express stipulation that the cause be heard and determined upon the pleadings and the stipulations on file, upon briefs and arguments of counsel and the record at large, complainant State of Tennessee appearing by its solicitor of record, Honorable George F. McCanless, Attorney General and Reporter, by his assistant, C. Hayes Cooney, Esquire, and defendant Arthur L. Cox, Esquire, as Successor Guardian of Aquilla Redditt, non compos mentis, appearing in person and by his solicitor of record, Thomas F. Turley, Jr.

From all of which it satisfactorily appears, and the Court accordingly FINDS and so ADJUDGES that the facts are as stipulated: that the defendant's contentions that complainant has in the circumstances no right to recovery herein are without merit except as regards the period prior to September 23, 1949 and that complainant has established herein its right to recover from Arthur L. Cox, as Successor Guardian of Aquilla Redditt for the institutional care of his ward at the rates prescribed by statute for "private pay patients" for the period from September 23, 1949, through April 1, 1967, or a total of $14,180.00, together with interest from the filing of the original bill herein on May 11, 1961, or $6,073.77, or a total of $20,253.77, together with the costs of the cause.

Accordingly, it is ORDERED that Arthur L. Cox, as Successor Guardian of Aquilla Redditt, pay from the funds in his hands as such, and take credit on his next settlement

therefor, the sums to which complainant is hereby adjudged to be entitled, subject to the provisions of the stipulation filed herein that unless and until the issue of Aquilla Redditt's right to inherit directly from his Mother, Sudie Redditt, is adjudicated in favor of such right of inheritance by a court of competent jurisdiction complainant will seek satisfaction of any decree rendered in its favor herein only from funds and estate of Aquilla Redditt deriving directly from his inheritance from his father, Greenberry Redditt, and from his brother, Ernest Redditt, plus funds and estate hereafter acquired which do not derive directly from inheritance from his Mother, Sudie Redditt.

To so much, and to such parts, of the foregoing as are contrary to their contentions the parties respectfully except and pray appeals to the next term of the Supreme Court, at Jackson, which are hereby granted, defendant's upon his posting as such Successor Guardian an appeal bond conditioned as required by law.

All of which is hereby ORDERED, ADJUDGED and DECREED.

/s/ Robert L. Taylor
Chancellor
7-1-68

2. Supreme Court Decree

(Entered April 4, 1969)

This cause coming on to be heard upon a transcript of the record from the Chancery Court of Shelby County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that the decree of the Chancellor should be modified, as indicated by the Court in its opinion filed.

It is further ORDERED and DECREED by the Court that the decree of the Chancellor, as modified, is affirmed and that the State of Tennessee have and recover of Arthur L. Cox, Successor Guardian of Aquilla Redditt, the sum of $22,351.11 and the costs of the court below, for which let execution issue.

The cost of the Appeal will be paid by Arthur L. Cox, Successor Guardian of Aquilla Redditt, as principal, and Fidelity and Deposit Co. of Maryland, as surety, for which let execution issue.

/s/ Allison B. Humphreys
Justice

3. Opinion of the Tennessee Supreme Court

This case was instituted by the State of Tennessee through its Attorney General and the Superintendents of two of its mental hospitals, namely, Central State Hospital at Nashville, Tennessee, and Western State Hospital at Bolivar, Tennessee, to recover from the estate of Aquilla Redditt the cost of care, treatment and support rendered to Aquilla Redditt from October 15, 1924, to April 1, 1967. The Chancellor awarded the plaintiffs a recovery in the sum of $14,180.00 for the period between September 23, 1949, and April 1, 1967, and interest of $6,073.77, against Arthur L. Cox, Successor Guardian of the estate of Aquilla Redditt non compos mentis, and denied recovery for the period between October 16, 1924, and September 23, 1949, on the basis of laches. Both parties have appealed from those portions of the decree adverse to their interests.

This cause was heard by the Chancellor upon the pleadings and six stipulations. Contained therein are the following facts. Aquilla Redditt was indicted in the Criminal Court of Shelby County, Tennessee, on October 14, 1924, for the murder of his mother. At the arraignment

Aquilla Redditt, appeared in person and with his attorney, and entered a plea of present insanity to the indictment. A trial on the issue of his present insanity was held, and a duly constituted jury determined that Aquilla was presently insane. In accordance with then Public Acts 1919, Chapter 17, §18,17 and now T.C.A. §33-706, 33-707, Aquilla was forwarded to Western State Hospital to be confined and upon his being restored to sanity returned to the committing court for trial. Aquilla was confined at Western State Hospital from October 16, 1924, to November 10, 1932, at which time he was properly transferred to Central State Hospital where he has remained and is now.

The parties stipulated that "the insanity of Aquilla on October 15, 1924, at all times since and at present, was and is congenital, complete and beyond any known treatment". This is corroborated by a letter dated January 22, 1962, from Dr. J. N. Fidelholtz, Director of Maximum Security at Central State Hospital.

When Aquilla was originally admitted to Western State Hospital in 1924, he was classified as a poor person or a first class patient, as defined under T.C.A. §33-611, 33-613, and as such entitled to his hospitalized confinement at the expense of the State of Tennessee. This classification was retained until the commencement of this suit on May 11, 1961, at which time the State of Tennessee determined that Aquilla had always been and is now a third-class or private-pay patient as defined under T.C.A. §33-612 and 33-616. The State seeks, pursuant to T.C.A. §33-706 and 33-631, recovery of the amount of money Aquilla would have expended had he been classified a third-class, private-pay patient when admitted on October 16, 1924, to April 1, 1967.

The State originally sought recovery of this sum from those assets of Aquilla's estate acquired from his mother,

who died on October 9, 1924; from a brother, who died on September 23, 1949; and from his father, who died on September 29, 1950. In Stipulation No. 5, the parties agreed to limit possible recovery to those assets acquired from Aquilla's father and brother.

A primary defense asserted by the defendant is the failure of the State to pursue timely its rights of recovery for hospital expenses against the father and other relatives of Aquilla Redditt under T.C.A. §33-629, formerly Acts 1919, Chapter 17, §22; Shan. Supp. §2642a 43; Code 1932 §4488, which inaction it is alleged constituted laches. It is contended this delay by the State prejudiced Aquilla Redditt's estate because during the period from Aquilla's initial commitment in 1924 until his father's death in 1950, the father, Greenberry Redditt, had an estate sufficient to pay for Aquilla's care and maintenance but by the time Greenberry died, he had foolishly squandered the bulk ot his estate. That, since his father could have been made to pay the hospital expenses out of this money he otherwise foolishly spent, without any right of subrogation against Aquilla or his estate, Aquilla's inheritance from his father would have been just as much and would be free from the present claim.

Defendant also contended (1) that the confinement of Aquilla was not and has not been for the purpose of treating and benefiting him, but was for the protection of the State and its people like the imprisonment of any criminal and that to hold otherwise would amount to an unconstitutional forfeiture of the ward's estate; and (2) that the statutes relied upon by the State for recovery do not permit recovery for those years of commitment prior to Aquilla's acquisition of any estate or property when he was classified as a poor person.

The Chancellor held that the State was entitled to recover care and maintenance per an itemized schedule in the record for the period of September 23, 1949, to April 1, 1967, amounting to $14,180.00, with interest from the date of filing May 11, 1961, amounting to $6,073.77, and further the State was prohibited from recovery for that time prior to September 23, 1949, because of laches. To this decree the parties have taken exceptions and filed appeals.

Summarized, Arthur L. Cox, Successor Guardian of Aquilla Redditt, contends (1) the commitment of Aquilla to a state mental hospital pursuant to T.C.A. §33-706 is violative of the United States Constitution, Article 1, §9, clause 3, prohibiting "Bills of Attainder", which term includes "Bills of pain and penalties,". (2) The attempt by the Complainant to recover the cost of care and maintenance rendered to Aquilla in the state institutions violates the Tennessee Constitution, Article 1, §12, prohibiting forfeitures of estate to the sovereign for the conviction of a crime. (3) The confinement of Aquilla for 44 years upon an indictment for murder and a determination that he lacked the mental capacity to assist his attorneys in formulating a defense constitutes a violation of the Tennessee Constitution, Article 1, §8, 17 and the United States Constitution, Amendment 5, applicable to the states by Amendment 14, which guarantee in substance that no individual shall be deprived of his life, liberty or property but by the judgment of his peers or due process of law; (4) that Aquilla's confinement is the product of "criminal processes" requiring confinement of an insane person indicted for the crime of murder until sanity is restored. That the confinement's basic purpose is to protect society from this person for which the State should in accordance with principles of fairness and law bear the expense of such confinement as it would were Aquilla serving a sentence in prison, and (5) should the Complainant's right to recover

be affirmed, interest should not be awarded since it would contravene the rule governing situations where interest should be allowed as delineated in Gibson's Suits in Chancery, 8th Ed., §605.

The State contends the defense of laches should not have been sustained as to the period prior to September 23, 1949, since the failure of Complainant to collect the cost of care and maintenance from the father in no way prejudices Aquilla or his estate.

Defendant's first assignment of error asserts that confinement in a state mental institution pursuant to T.C.A. §33-706 constitutes a "Bill of Attainder" prohibited by the United States Constitution, Article 1, §9, clause 3 applicable to the states by Article 1, §10. T.C.A. §33-706, 33-707 are as follow:

> "§33-706. *Expense of Maintenance—Chargeable to county's quota—Conveying to and committing to hospital—Return to prison on restoration of sanity.*—If any person charged with or convicted of crime be adjudged by the court before which he is so charged or convicted to be insane, and if such court shall order him to be confined in one of the state hospitals, he shall be received and confined in it at state expense, if he be a poor person as defined in §33-611, and charged to the quota of that county if there be a vacancy. If there be no vacancy in the quota of that county, he must be received anyway, but if such person so received has an estate of his own, the expense of his maintenance and care in the hospital shall be paid from said estate as other pay patients in class three (3). In all such cases such patient shall be immediately upon being adjudged by the court insane turned over to the custody of the sheriff of the county who shall immediately proceed, in the manner hereinbefore provided, to communicate with the superintendent of the hospital and he shall be conveyed to the hospital as all other patients. When a convict becomes

insane, he may be committed to the hospital of the district from which he was convicted, and charged to the county where convicted, if a county patient. The prison physician and warden shall determine and certify his insanity. When sanity is restored he shall be returned to the prison and complete his term, being allowed credit for the period of his insanity.

§33-707. *Notice given clerk of committing court of restoration to sanity—Delivery of patient to county sheriff.*—When any person confined in a state hospital, charged with crime and subject to be tried therefor, or convicted of crime and subject to punishment therefor, shall be restored to sanity, the superintendent shall give notice thereof to the clerk of the court by whose order he was confined, and deliver such patient to the sheriff of the county from which said patient was committed."

A "Bill of Attainder" is a legislative act which inflicts punishment without a judicial trial, "where the legislative body exercises the office of judge, and assumes judicial magistracy, and pronounces on the guilt of a party without any of the forms or safeguards of a trial and fixes the punishment." In re DeGiacomo, C.C. N. Y. 1874, 12 Blatchf. 391, 7 Fed. Con. No. 3,747; see also, Cummings v. Missouri, 71 U.S. 277, 18 L. Ed. 356.

T.C.A. §33-706, 707 are not a "Bill of Attainder." The first sentence in T.C.A. §33-706 expressly states "If any person charged with or convicted of crime *be adjudged* . . . . to be insane, etc." (emphasis added). The statute requires that a man must first be judicially determined insane before he may be committed to a state mental institution. The legislature did not usurp a judicial function but to the contrary required one. Aquilla in person and through his attorney, entered a plea of present insanity at his arraignment. There was a jury trial on this issue and he was adjudged insane.

The statute provides no punishment, pain or penalty. When T.C.A. §33-706 is read in *pari materia* with §33-707, as it must, the intention is simply that an insane person charged with crime be committed to a mental hospital to be looked after like any other mentally ill person, until he can stand trial.

In the case of State ex rel. Bricker v. Griffith, 36 N.E.2d 489 (1941), the Ohio Court of Appeals upheld a similar recovery by the State of Ohio upon statutes similar in wording and effect to the statutes herein. That Court stated with reference to a factual situation like the case *sub judice*, and to the same contentions as those raised by the Defendant herein, stated that:

> "There would seem to be no doubt that Griffith was *committed* to the Lima State Hospital; that it is a *hospital for the insane*; and that is a *state* hospital. It is characterized in the law as a state hospital and the sole and only purpose of its creation was to provide hospitalization for the insane." (36 N.E. 2d 491).
>
> "In our judgment he clearly was in Lima State Hospital by virtue of the determination of a duly constituted body, namely, the jury in Common Pleas Court, that he was an insane person. Having been so adjudged by virtue of Section 1985, G.C., subparagraph 4, he was committed, as an insane person, to the Lima State Hospital. It is true that another consequence attends because his insanity intervened to prevent duly constituted authority from requiring him to answer to the criminal charge against him and to assure that this be accomplished the law provides that if and when he is restored to sanity, he shall be returned to the custody of the court where he was indicted. Section 13613 G.C., was effective when Griffith was committed.
>
> "The fact that Griffith stands indicted for crime operates not at all to effect his commitment nor his incumbency in the hospital. It is only when and if he

is restored to sanity that the indictment operates to cause his return to be tried thereon." (36 N.E. 2d at 491, 492).

"The effect of the verdict of a jury in the situation presented in this case is identical with the effect of an inquest conducted by the Probate Court, wherein the insanity of a person is determined. In the Probate Court an inquest of insanity is initiated by an affidavit of some person mentioned in Section 1890-23, G.C. The Probate Judge causes the person to be brought before him after due notice of the hearing. Upon hearing the Probate Judge may take testimony of witnesses and not to exceed two medical witnesses. He then makes determination whether or not the person on whom the inquest is being held is mentally ill or insane and, if so, orders him committed. The effect of the determination of the Probate Judge that the person is insane is identical with such determination by the jury in Griffith's case. Upon the verdict of insanity the Common Pleas Court may commit a person charged to be insane to the Lima State Hospital only. The Probate Court may commit him to such hospital or may commit him to some other state hospital. After the insane person has been committed to a hospital for the insane by the Probate Judge, the custody of that person is in the Superintendent of the hospital to which he was committed and his release from that institution depends entirely upon a determination of the Superintendent, with the written consent of the Director of Public Welfare, with which the Probate Judge has nothing to do. Now the subject of statute, G.C., 1890-49. State ex rel. v. Lamneck, 133 Ohio St. 257, 13 N.E. 2d 127.

"The same situation attends respecting the commitment and release of Griffith. The only difference is that in Griffith's case, if he is restored to sanity, the law requires that instead of permitting him to go free entirely, he is released from Lima State Hospital but is at that time placed into the custody of the Court of Common Pleas, wherein an indictment is and has

been pending against him. If not restored to sanity his commitment operates in all particulars as if he had been committed by a Probate Judge." (36 N.E. 2d 493).

Robinson v. California (1962), 370 U. S. 660, 8 L. Ed. 758, 82 S. Ct. 1417, cited by defendant for the proposition that it cannot be made a punishable crime for a person to be insane is not in point. It holds that a statute making drug addiction an imprisonable crime is violative of the Federal Constitution, T.C.A. §33-706 does not make insanity a crime.

Defendant's next insistence is that to require Aquilla to pay for his care and maintenance in the mental hospitals amounts to a violation of the Tennessee Constitution, Art. 1, §12 prohibiting forfeiture of estate for conviction of a crime. Aquilla has not been tried or convicted of any crime nor is he being subjected to a forfeiture of estate. At common law, certain doctrines existed requiring the forfeiture of one's estate to the sovereign when guilty of specified crimes. The forfeiture therein effected was complete without regard to any consideration being rendered to the dispossessed culprit. The State is endeavoring not to effect a forfeiture of Aquilla's estate but rather recompense for the *quid pro quo* rendered in the form of hospitalized care and maintenance. The State's action is analogous to a quantum meruit action in that it is to recover for the service and material items afforded Aquilla during his hospitalized confinement, not a forfeiture action.

Defendant's third contention is that Aquilla's confinement for 44 years on no more than an indictment for murder and a judicial determination that he lacked the capacity to assist his attorneys in formulating a defense constitutes a violation of the United States and Tennessee Constitutions' guarantees that no individual shall be deprived

of his life, liberty or property but by judgment of his peers or by due process of law.

The argument that the abstract test of commitment on a plea of present insanity, mental ability to assist counsel, is not conclusive of the necessity of continued confinement, and so deprives defendant of his liberty without due process is untenable. It is stipulated the judgment on which defendant is confined is for present insanity. It is stipulated defendant has been insane ever since committed so we are not confronted with a case to which this argument might apply.

Defendant's fourth assignment is he should not pay because his confinement is essentially criminal so he should be treated as convicts are under T.C.A. §41-301. That under T.C.A. 33-706 a person, charged or convicted of crime and adjudged by the court before which he is so charged or convicted to be insane causing his commitment to a mental hospital by that court, is required to pay for the cost of his hospitalized care and maintenance unless he is a poor person as defined by T.C.A. §33-611. While, under T.C.A. §41-301 et seq., a person who becomes insane while in prison receives his hospital care and maintenance at state expense regardless of financial status. Defendant further contends the essentially criminal character of his confinement is demonstrated by Marsh v. Henderson, ___ Tenn. ___, 424 S. W. 2d 193, wherein it was held that one confined at Central State under a plea of present insanity for eleven (11) years was entitled to credit for those years, pursuant to the general intendment of T.C.A. §40-3102, when he was restored to sanity, tried and convicted of a lesser degree of the crime charged.

Though superficially appealing this proposition does not justify a reversal. First, it has been generally rec-

ognized that the support and maintenance of insane criminals is primarily a matter of statutory regulation:

> "*Estate of insane person.* Where the statute so provides, the estate of persons charged with crime and found insane may be charged for their support and maintenance, and their estate, if any, may be liable to the county, town, city or district which has paid for their maintenance." 44 C.J.S. §132, p. 290.

Second, in *Marsh*, supra, the Court did not say that time spent in a mental hospital under a plea of present insanity is tantamount to time spent in prison; the decision simply construed the general intendment of T.C.A. §40-3102, which prescribes time periods applicable to the sentence of a convicted criminal.

Finally, the fact must be kept in mind that Aquilla is not a criminal, but a patient committed to the mental hospital pursuant to his own request; and that his confinement is not for a crime. As matters stand Aquilla has not even entered a plea to the indictment against him and, moreover, is presumptively innocent thereof.

Defendant cites Mental Hygiene v. Hawley (1963), 28 Cal. Rpts. 718, 379 P. 2d 22, but this case is not in point. That case held at p. 28 the State could not recover the expenses of care and maintenance from the *relatives* of the insane person because "only one who has been *charged with* or convicted of a crime may be made to suffer deprivation of his liberty, or be subjected to other penal sanctions, for the crime" (emphasis added). From this quote, it is patent in spite of several statements pointing in the opposite direction that the decision did not prohibit recovery from the insane defendant's estate, but from the insane defendant's relatives.

We agree with appellant interest should not have been allowed on this claim. While the allowance of interest

would ordinarily be permissible in the discretion of the chancellor, on a liquidated demand such as this we do not think it should have been allowed. First, because there is no provision for interest in T.C.A. §§33-616, 631, under which the state claim is made. Although liability is provided for and an elaborate arrangement for security and collection spelled out in detail, interest is not mentioned. In fact, §33-631 expressly states the recovery shall consist of "the whole amount of money expended for maintenance and care . . ."

Additionally, when consideration is given to the fact that the state in this particular area is at most entitled to the return of its expenses and not to a profit by way of interest for the use of its money, and the further fact that the State has unlimited time within which to recover, the statute of limitation having no application, the idea of interest is so downright unjust that we are moved to disallow it.

However, we do agree with the State that there is no real basis to deny a part of this claim for laches. The contention that the failure of the State to collect from Aquilla's father constitutes laches since the father practically dissipated his estate prior to his death, and that if the State had recovered from the father for those years out of money he squandered, Aquilla's inheritance from his father would not have been affected, is too tenuous to sustain the plea. The prejudice from this delay is too uncertain to set the doctrine in motion.

Here, we have a suit to collect a debt which is certain in amount, about which there are no doubts or defenses, by a party unaffected by the statute of limitation so it should not apply. In discussing laches Gibson categorizes

the cases to which the doctrine applies (footnote) and this case does not come within any of these categories.

Moreover, we have a case, State v. City of Columbia, (Tenn. Ch. App.), 52 S. W. 511, holding that the doctrine of laches does not operate to bar a claim by the State for its revenue. While the general principle of the application of the doctrine of laches to the state may be subject to further consideration in a case strongly calling for it, that is not the situation here. The State's assignment of error on this proposition is sustained.

With the decree of the lower court modified by the disallowance of interest, and by the allowance of a recovery on the full claim, unaffected by the doctrine of laches, the judgment as modified is affirmed.

s Allison B. Humphreys
Allison B. Humphreys, J.

Concurring:
Burnett, C. J.,
Dyer, J., Chattin, J.,
and Creson, J.

Footnote:

"Laches will bar suits (1) to open accounts and settlements long acquiesced in; (2) to change a boundary line long recognized; (3) to correct an alleged fraud, accident or mistake long submitted to; (4) to have a nuisance abated that has long existed; (5) to have a contract either rescinded or specifically enforced, when by delay the parties cannot be placed in statu quo; (6) or to have any transaction uprooted, or any business unravelled, when, in consequence of long acquiescence, the chances are that material evidence has been lost, that the memory of the facts has become dimmed, that parties or witnesses have died or removed, and that new rights have sprung up that should not be unsettled." (Gibson, Vol. 1, p. 103, §81)

APPENDIX B

Text of Statutes

TENNESSEE CODE ANNOTATED

1. "33-631. Investigation as to poverty of a patient committed as a poor person—If not poor, suit lies to recover for state or county—Patient to be returned.—Certification to the superintendent of the hospital by county judge or chairman that an insane person ordered committed is a poor person, as defined in §33-611, is only prima facie evidence of same, and the superintendent or commissioner of mental health is authorized to make such further investigation as he deems proper to determine the matter, and if it is found that such person is not a poor person, the superintendent or commissioner of mental health is authorized and required to institute proceedings to collect from the estate of such person or from the one legally liable therefor, as herein provided, the amount expended for maintenance and otherwise of such patient. Said suit, if on account of a patient of the first class, shall be in the name of the state and for its benefit, and shall be brought and prosecuted by the state attorney-general, or as provided by §8-606. If on account of a patient of the second class, the suit shall be in the name of the county from which the patient was sent and for its benefit, and shall be brought and prosecuted by the county attorney, if there be one of the county from which the patient was sent, and if said county has no attorney, then by the district attorney of that district, said recovery to include the whole amount of money expended for maintenance and care of such patient. The superintendent is also authorized immediately upon determining such conditions as remove the patient from that of a poor person, to return the patient immediately after notice given, of five (5) days, to the

county court clerk or county judge or chairman of the county from which the patient came." [Repealed, Acts 1965, Chapter 38, Section 48].

2. "33-701. Hospitalization of persons charged with crime or juvenile delinquency.—(a) When any person charged with or convicted of the commission of a criminal offense or juvenile delinquency is believed to be mentally ill or when any person is acquitted of a criminal charge on a verdict of not guilty, by reason of insanity, the judges having criminal or juvenile jurisdiction thereof shall have authority, upon petition filed by the district attorney-general, or the attorney for the defendant, and after hearing, as provided in § 33-604, to order the defendant hospitalized in a state mental hospital having suitable facilities therefor, for observation, care and treatment for a period not exceeding thirty (30) days. The cost of maintaining the defendant in the institution, as determined pursuant to §§ 33-403 and 33-407, shall be added to the court costs and paid as other court costs. Provisions to the contrary in chapters 3 to 6, inclusive, of this title relative to the cost of maintaining patients hospitalized under court order shall not apply to persons temporarily hospitalized under this paragraph.

(b) The superintendent of the hospital in which an individual is hospitalized under paragraph (a) of this section shall, not later than thirty (30) days after admitting such individual in the hospital, certify to the court which ordered his hospitalization whether or not the conditions which justified his hospitalization still exist. If so, he shall be detained in the hospital and an order for his hospitalization shall be entered, and if otherwise, he shall be returned to the court which ordered his hospitalization for such disposition or further proceedings as are appropriate to the case. If the individual is detained in the hospital,

the superintendent shall examine him or cause him to be examined as often as practicable, but not less often than every six (6) months, and proceed as provided in §33-604 (d)."

3. "33-706. Expense of maintenance—Chargeable to county's quota—Conveying to and committing to hospital —Return to prison on restoration of sanity.—If any person charged with or convicted of crime be adjudged by the court before which he is so charged or convicted to be insane, and if such court shall order him to be confined in one of the state hospitals, he shall be received and confined in it at state expense, if he be a poor person as defined in §33-611, and charged to the quota of that county if there be a vacancy. If there be no vacancy in the quota of that county, he must be received anyway, but if such person so received has an estate of his own, the expense of his maintenance and care in the hospital shall be paid from said estate as other pay patients in class three (3). In all such cases such patient shall be immediately upon being adjudged by the court insane turned over to the custody of the sheriff of the county who shall immediately proceed, in the manner hereinbefore provided, to communicate with the superintendent of the hospital and he shall be kept in the county jail until arrangements are made with the hospital to receive him, and he shall be conveyed to the hospital as all other patients. When a convict becomes insane, he may be committed to the hospital of the district from which he was convicted, and charged to the county where convicted, if a county patient. The prison physician and warden shall determine and certify his insanity. When sanity is restored he shall be returned to the prison and complete his term, being allowed credit for the period of his insanity." [Repealed, Acts 1965, Chapter 82, Section 21.]

4. "40-3304. Costs adjudged.—The costs which may be adjudged in criminal cases include all costs incident to the arrest and safekeeping of the defendant, before and after conviction, due and incident to the prosecution and conviction, and incident to the carrying of the judgment or sentence of the court into effect."

5. "40-3320. Certification of fees for boarding juries and prisoners under indictment.—In all felony cases, after indictment is found, in which the state may eventually become liable, the judge shall render judgment against the state for, and certify at the adjournment of each term of the court, all fees of the sheriff for board of the prisoners; also the fees for boarding the juries in cases in which no final disposition has been had."

6. "40-3325. Payment of costs by defendant.—If the defendant is convicted of a criminal offense, he shall pay all the costs which have accrued in the cause."

7. "40-3332. Circumstances when state or county liable.—The state, or the county in which the offense was committed or is triable, according to the nature of the offense, pays the costs accrued on behalf of the state, and for which the state or county is liable under §40-3331, in the following cases:

"(1) When the defendant is acquitted by a verdict of the jury upon the merits.

"(2) When the prosecution is dismissed, or a nolle prosequi entered by the state.

"(3) When the action has abated by the death of the defendant.

"(4) When the defendant is discharged by the court or magistrate before indictment preferred or found, or after indictment and before verdict.

"(5) When the defendant has been convicted, but the execution issued upon the judgment has been returned 'nulla bona.'"

8. "40-3335. Costs included.—What is meant by costs in §§40-3333 and 40-3334 is all costs accruing under existing laws on behalf of the state or county, as the case may be, for the faithful prosecution and safekeeping of the defendant, including the cost of boarding juries and that of the jailer; but nothing in this, or said sections, shall be so construed as to require the state to pay any cost for guarding the jail to prevent mob violence, or to prevent rescue or the prisoner's escape, or for transporting to any other county for safekeeping on any account whatever, but the same shall be paid by the county in which the crime was committed or claimed to have been committed."

9. "40-3336. Judgment for costs.—The judgment for costs may be rendered at the time of conviction, or, upon motion, at any time subsequent thereto, and execution awarded accordingly."

LIBRARY
SUPREME COURT, U. S.

FILED
AUG 2 91969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM.

No. [illegible]

ARTHUR L. COX, Successor Guardian of Aquilla Redditt,
Petitioner,

vs.

STATE OF TENNESSEE, by and Through Its Attorney General and Reporter, GEORGE F. McCANLESS,
and
CENTRAL STATE HOSPITAL, a Corporation, by and Through Its Superintendent, Dr. O. S. HAUK,
and
WESTERN STATE HOSPITAL, a Corporation, by and Through Its Superintendent, DR. EDWIN M. LEVY,
Respondents.

BRIEF

In Opposition to Petition for a Writ of Certiorari to the Supreme Court of Tennessee.

THOMAS L. FOX,
Deputy Attorney General,
State of Tennessee,
Supreme Court Building,
Nashville, Tennessee 37219,

C. HAYES COONEY,
Assistant Attorney General,
State of Tennessee,
Supreme Court Building,
Nashville, Tennessee 37219

St. Louis Law Printing Co., Inc., 411 N. Eighth St., 63101 314-231-4477

INDEX

	Page
Jurisdictional statement	1
Opinion below	2
Jurisdiction	2
Questions presented	3
Statutes involved	4
Statement of the case	5
Argument	7
Conclusion	11
Appendix	A-1

Cases Cited

Boudinarmo v. Illinois, 360 U. S. 236, 264 (Dec. 19 U. S. 223, 240 (1961), 61 L. Ed. 830, 839 (1961)) 8, 9, 11

Michel v. Louisiana, 350 U. S. 91, 101 (1955), 76 S. Ct. 158, 164, 100 L. Ed. 83, 93 8, 9, 11

N. A. A. C. P. v. Alabama ex rel. Patterson, 357 U. S. 449, 460, 78 S. Ct. 1163, 1171, 2 L. Ed. 2d 1488, 1497 8, 9, 11

Statutes and Rules Cited

Supreme Court Rules, Rule 19 (1) (c) and 23 (1) (c) 8, 9, 11

Supreme Court Rules, Rule 40 (1) 8

Louisiana Code, Annotated

Section 33:451 and 33:456 4, 7

Section 14:59 4, 7

Section 14:59, (2) and (3) 11

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM.

No

ARTHUR L. COX, Successor Guardian of Aquilla Redditt,
Petitioner,

vs.

STATE OF TENNESSEE, by and Through Its Attorney General and Reporter, GEORGE F. McCANLESS,

and

CENTRAL STATE HOSPITAL, a Corporation, by and Through Its Superintendent, Dr. O. S. HAUK,

and

WESTERN STATE HOSPITAL, a Corporation, by and Through Its Superintendent, DR. EDWIN M. LEVY,
Respondents.

BRIEF

In Opposition to Petition for a Writ of Certiorari to the Supreme Court of Tennessee.

JURISDICTIONAL STATEMENT

In this case, the Petitioner seeks a review of the final decree of the Supreme Court of Tennessee, entered on April 4, 1961, awarding the State of Tennessee and two

(2) of its mental hospitals, namely Central State Hospital at Nashville, Tennessee and Western State Hospital at Bolivar, Tennessee, both corporations, a recovery from the estate of Aquilla Redditt for the reasonable cost of care, treatment and support rendered to Aquilla Redditt in the two (2) aforesaid hospitals from October 15, 1924, to April 1, 1967, in the amount of $22,351.11 plus costs. The Respondents deny that any substantial questions are presented.

OPINION BELOW.

The opinion of the Tennessee Supreme Court in this case has not yet been officially reported, but may be found at 439 S. W. (2d) 267 (Tenn. 1969). The trial court did not render a written opinion, but correct copies of the aforesaid opinion and final decrees in the trial and appellate courts are attached to the Petitioner's petition as Exhibit A.

JURISDICTION.

This suit was instituted in 1961 by the State of Tennessee through its Attorney General and the Superintendents of two (2) of its mental hospitals, namely Central State Hospital at Nashville, Tennessee, and Western State Hospital at Bolivar, Tennessee, to recover from the estate of Aquilla Redditt from October 15, 1924 to April 1, 1967. The validity of the statutes was attacked in the trial court and in the Supreme Court of Tennessee under the Constitution of the State of Tennessee and under certain portions of the Constitution of the United States, however, the Respondents deny that the requirements of invoking the jurisdiction of this Honorable Court on the questions raised in this appeal have been met in that these questions *per se* have not been raised prior to their presentation herein as will be discussed hereinafter. Further, as pointed out in the Petitioner's brief the final decree of the Tennes-

see Supreme Court was entered on April 4, 1969 and notice of appeal was filed in the trial court on June 26, 1969. Under Title 28, United States Code, Section 2101 (c) appeals or writs of certiorari intending to bring any decree in a civil action before this Honorable Court for review are required to be taken or applied for within ninety (90) days after the entry of such decree, however, a justice of this Honorable Court, for good cause shown, may extend the time for applying for a writ of certiorari for an additional sixty (60) days. Ninety (90) days from the date of the aforesaid final decree of the Tennessee Supreme Court on April 4, 1969, expired on July 4, 1969. The Respondents are advised that an application for an extension of time was not made by the Petitioner until July 3, 1969, and on July 11, 1969, Mr. Justice Stewart ordered the Petitioner time for filing a petition for a writ of certiorari extended to August 4, 1969, without prejudice to the court's consideration of the timeliness of the application (See A and B Exhibits hereto). The Petitioner states in his brief herein that jurisdiction is conferred upon this Honorable Court by Title 28, United States Code, Section 1257 (a). The Respondents recognize that the jurisdiction of this Honorable Court to review this decision may exist under Title 28, United States Code, Section 1257 (3) by a writ of certiorari rather than by an appeal at this time but they are unable to find any Section 1257 (a) thereof.

QUESTIONS PRESENTED.

The Respondents are dissatisfied with the presentation of the questions by the Petitioner and, therefore, pursuant to **Rule 40 (3)** of the **Supreme Court Rules**, present the questions as follows:

(4) Whether or not the State of Tennessee and its mental hospitals may validly recover, pursuant to State statutes, from the estate of a person confined or hospital-

ized in its mental hospitals since 1924 under a court order resulting from such person's plea of present insanity to a murder indictment and jury verdict finding him to be presently insane, the reasonable cost of care, treatment and support rendered him in such hospitals or are such statutes involved under the due process, equal protection, and cruel and unusual punishment clauses of the Constitution of the United States?

(2) Has the Petitioner been denied any other federal right, whether or not such denial is capable in itself of being brought to this Honorable Court on appeal or certiorari?

STATUTES INVOLVED.

Sections 17 and 18 of Chapter 17 of the Public Acts of the 1919 General Assembly of the State of Tennessee, which were later codified as Tennessee Code Annotated Sections 33-631 and 33-706, are the State Statutes herein involved and the same were repealed by Chapter 38, Section 48 and Chapter 82, Section 21 of the Public Acts of the 1965 General Assembly of the State of Tennessee, Tennessee Code Annotated Section 33-707 is also however involved herein. State statute reads as follows:

> "When any person confined in a state hospital, charged with crime and subject to be tried therefor, or convicted of crime and subject to punishment therefor, shall be restored to sanity, the superintendent shall give notice thereof to the clerk of the court by whose order he was confined, and deliver such patient to the sheriff of the county from which said patient was committed."

STATEMENT OF THE CASE.

Aquilla Redditt was indicted in the Criminal Court of Shelby County, Tennessee, on October 14, 1924, for the murder of his mother. At his arraignment he appeared in person and with his attorney and entered a plea of present insanity to the indictment. A trial on the issue of his present insanity was held and a duly constituted jury determined that he was presently insane. In accordance with the State law then existing he was forwarded to Western State Hospital to be confined and, upon his being restored to sanity, returned to the committing court for trial. He was confined at Western State Hospital at Bolivar, Tennessee, from October 16, 1924, to November 10, 1932, at which time he was properly transferred to Central State Hospital in Nashville, Tennessee, where he remained at all material times.

The parties hereto stipulated that "the insanity of Aquilla Redditt on October 15, 1924, at all times since and at present, was and is congenital, complete and beyond any known treatment. This fact is corroborated by a letter dated January 22, 1962, and made a part of this record, from the doctor who was then the Director of Maximum Security at the aforesaid Central State Hospital. The parties further stipulated that Aquilla Redditt was never married and had no children; that his mother and father were both deceased; that he had one (1) living brother and one (1) living sister, both of whom had also been adjudged mentally incompetent and whose estates were also being administered by the Petitioner.

When Aquilla Redditt was originally admitted to the aforesaid Western State Hospital in 1924, he was classified as a poor person under State law and as such entitled to his hospitalization at the expense of the State of Tennessee. This classification was retained until the

commencement of this suit on May 11, 1961, at which time the State of Tennessee determined that he had always been and was at that time a private-pay patient, or one with a sufficient estate of his own to pay for the cost of his care, treatment and support, as defined under State law. The State sought, pursuant to the aforementioned State statutes, to recover from his estate the reasonable cost of the care, treatment and support rendered him from the aforesaid date of his admission to April 1, 1967. The State agreed in the latter stage of the case to limit possible recovery to those assets acquired by Aquilla Redditt from his father, who died in 1950, and from his brother, who died in 1949.

ARGUMENT.

I.

The first contention presented by the Petitioner is whether or not the State of Tennessee and its mental hospitals may validly recover, pursuant to State statutes, from the estate of a person hospitalized in its mental hospitals since 1924 under a court order resulting from such person's plea of present insanity to a murder indictment and jury verdict finding him to be presently insane, the reasonable cost of the care, treatment, and support rendered him in such hospitals or are such statutes invalid under the due process, equal protection, and cruel and unusual punishment clauses of the Constitution of the United States?

Within this question the Petitioner apparently first contends that State statutes such as those herein involved effect an allocation of pre-trial detention expenses which unconstitutionally and invidiously discriminates against the insane defendant. Initially the Respondents state, that contrary to the statement in the Petitioner's petition, the purpose of Aquilla Redditt's hospitalization and confinement is not solely to await trial, but it is to also provide him care and treatment for his mental condition until the time when, by proper care and treatment, he is able to stand trial for his alleged violation of the State's criminal law. Tennessee Code Annotated Sections 33-706 and 33-707, when properly read in *pari materia*, clearly demonstrate only an intention that insane persons charged with a crime shall be committed to a mental hospital to be cared for and treated and supported like any other mentally ill person, until he can stand trial.

Further, this contention itself was not raised or assigned as error upon his appeal to the Tennessee Supreme Court (See Opinion, Appendix A3 to Petition). It is well

settled that this Honorable Court will not review questions which have not been raised below. See, **Rules 19 (1-a) and 23 (1-f), Supreme Court Rules; N. A. A. C. P. v. Alabama ex rel. Patterson,** 357 U. S. 449, 466-467, 78 S. Ct. 1163, 1174, 2 L. Ed. 2d 1488, 1502; **Michel v. Louisiana,** 350 U. S. 91, 101-102, 76 S. Ct. 158, 164, 100 L. Ed. 83, 93; **Beauharnais v. Illinois,** 343 U. S. 250, 264-265, 72 S. Ct. 725, 734-735, 9 L. Ed. 919, 931-932.

The second contention made by the Petitioner apparently within this issue is that the statutes herein involved impose a cruel and unusual punishment upon insane defendants. The Respondents assert that the Petitioner is not being punished herein and that this contention also was not raised or assigned as error upon his appeal to the Tennessee Supreme Court (See Opinion, Appendix A3 to the Petition). It is well settled that this Honorable Court will not review questions which have not been raised below. See, **Rules 19 (1-a) and 23 (1-f), Supreme Court Rules,** and **N. A. A. C. P., Michel,** and **Beauharnais** cases, *supra.*

The third contention raised by the Petitioner also apparently within this question is that the statutes involved permit property of an insane defendant to be taken for a public purpose without just compensation. The Respondents assert that the recovery herein sought was merely recompense for the reasonable cost of the care, treatment and support rendered him personally during the time period herein involved at the aforesaid mental hospitals. The Petitioner has never denied the reasonableness of these costs or that he personally did not receive care, treatment and support. There is nothing in this record to show that other persons at these hospitals who can also afford to pay for the same care, treatment and support are not doing so. Further, this contention also was not raised or assigned as error upon his appeal to the Tennessee Supreme Court (See Appendix A3 to Peti-

tion). It is well settled that this Honorable Court will not review questions not raised below. See **Rules 19 (1-a) and 23 (1-f), Supreme Court Rules**, and **N. A. A. C. P., Michel** and **Beauharnais** cases cited, *supra.*

The fourth contention raised by the Petitioner also apparently within this issue or question is that the statutes herein involved attack an unconstitutional condition to the grant on one's due process right not to be tried for a crime unless capable of assisting in one's own defense. The Petitioner asserts that a defendant who claimed his right to due process of law by entering a plea of present insanity was granted it only upon the condition, inherent in the statutes involved, that he become liable for the State's expenses in holding him for trial while incompetent; that this condition, not imposed upon sane defendants who seek continuances for other reasons, had no rational purpose and do not conform to the requirements of due process. The Respondents deny that these statutes place any condition upon the Petitioner's right to due process of law or hindered him in making his plea of present insanity and deny that they placed a financial penalty upon pleading such incompetency. To the contrary, a defendant is free to enter such a plea and, if he is found to be insane by the jury, he will be hospitalized for care and treatment regardless of his financial situation. Further, this contention also was not raised or assigned as error upon his appeal to the Tennessee Supreme Court (See Opinion, Appendix A3 to the Petition). It is well settled that this Honorable Court will not review questions not raised below. See, **Rules 19 (1-a) and 23 (1-f), Supreme Court Rules**, and **N. A. A. C. P., Michel**, and **Beauharnais** cases, *supra.*

The fifth contention raised by the Petitioner also apparently within this issue or question is that the statutes herein involved impose a penalty upon insane defendants without an adjudication of guilt, contrary to due process

of law. Herein the Petitioner contends that he is under one system of jurisprudence, presumptively innocent of any crime; that he will remain so until the day he dies; that, nevertheless, the State of Tennessee, through these statutes, seeks to exact a financial penalty upon him based solely upon compulsory incarceration under criminal process and that imposition of a penalty in these circumstances violates due process of law. It is true that the Petitioner has not been tried or convicted of any crime and that, at the present time under our jurisprudence, he is presumed innocent of any crime. It is also true that he has been adjudged by a jury of his peers to be presently insane; and it was stipulated that he has been completely and congenitally insane ever since and beyond any known treatment in 1962. The record shows, however, that he has been receiving care, treatment and support during the entire time that he has been hospitalized. The Respondents aver that the Petitioner is not being penalized under criminal process, but, to the contrary, the Respondents are only seeking recompense for the *quid pro quo* rendered in the form of hospitalized care and maintenance. The fact must be remembered that the Petitioner is not a criminal, but a patient committed to a mental hospital pursuant to his own request, and his confinement is not for a crime. The Petitioner has not yet entered a plea to the merits of the charge against him and, unless some new treatment is developed, he never will enter such a plea. The statutes herein involved provide no punishment, pain or penalty. Further, this specific question was not raised in the Tennessee Supreme Court and under the citations, supra, will not be reviewed by this Honorable Court as a result thereof.

II.

The second contention presented by the Petitioner is whether the Petitioner has been denied any other federal right, whether or not such denial is capable in itself of

being brought to this Honorable Court on appeal or certiorari?

The import of this contention by the Petitioner is not clear and specific to the Respondent, however, apparently the Petitioner questions whether any other federal right has been denied the Petitioner which is capable of being brought to this Honorable Court on appeal or certiorari. This contention was also not raised or assigned as error upon his appeal to the Tennessee Supreme Court and cannot now be reviewed by this Honorable Court. See, **Rules 19 (1-a) and 23 (1-f), Supreme Court Rules,** and **N. A. A. C. P., Michel** and **Beauharnais** cases, *supra.* Further, the only type of question which can properly be raised under Title 28, Section 1257 (2) or (3) regarding a state statute is whether it is a violation of a provision of the Federal Constitution, a treaty or law, not whether it violates some "other federal right."

CONCLUSION.

As the petition presents no question which merits this Honorable Court's review upon a writ of certiorari, the Respondents respectfully submit that this petition for a writ of certiorari should be denied.

Respectfully submitted,

THOMAS E. FOX,
Deputy Attorney General,
State of Tennessee,
Supreme Court Building,
Nashville, Tennessee 37219,

C. HAYES COONEY,
Assistant Attorney General,
State of Tennessee,
211 Supreme Court Building,
Nashville, Tennessee 37219.

APPENDIX.

APPENDIX.

EXHIBIT A.

Office of the Clerk,
Supreme Court of the United States,
Washington, D. C. 20543.

July 8, 1969.

Daniel A. Rezneck, Esq.
Arnold & Porter
1229 19th St., N. W.
Washington, D. C. 20036

Re: Cox, Successor Guardian of
Redditt v. Tennessee, et al.,
No. ..., Oct. Term, 1969.

Dear Mr. Rezneck:

Your application for an extension of time to file a petition for a writ of certiorari in the above cause was presented to Mr. Justice Stewart who, on July 7th, signed an order extending the time to August 4, 1969, without prejudice to the Court's consideration of the question of the timeliness of this application.

A copy of the Justice's order is enclosed.

Very truly yours,
John F. Davis, Clerk,
By /s/ E. P. Cullinan,
E. P. Cullinan,
Chief Deputy.

Encl.
EPC:ht
cc: Hon. George F. McCanless
Attorney General of Tennessee
Supreme Court Bldg.
Nashville, Tenn. 37219

EXHIBIT B.

Office of the Clerk,
Supreme Court of the United States,
Washington, D. C. 20543.

July 14, 1969.

C. Hayes Cooney, Esq.
Assistant Attorney General of Tennessee
Supreme Court Bldg.
Nashville, Tenn. 37219

Re: Cox, Successor Guardian of
Aquilla Redditt v. Tenn.,
ex. rel. McCanless, et al.,
No. ..., Oct. Term, 1969.

Dear Mr. Cooney:

Replying to your letter of July 11th, you are advised that the application for an extension of time in the above case was presented to this office on July 3d, and tolls the time for filing such an extension. It was signed by Mr. Justice Stewart on July 11th, so that my letter of July 9 was in error in saying that he signed the order on July 3d.

Insofar as the extension of time is concerned, it is perfectly valid. However, the question of the timeliness of the application may be open to question.

Very truly yours,
John F. Davis, Clerk,
By /s/ E. P. Cullinan,
E. P. Cullinan,
Chief Deputy.

EPC:ht

SUPREME COURT OF THE UNITED STATES

October Term, 1969.

COX, SUCCESSOR GUARDIAN *v.*
TENNESSEE ET AL.

APPEAL FROM THE SUPREME COURT OF TENNESSEE, WESTERN DIVISION.

No. 430. Decided October 27, 1969.

PER CURIAM.

The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.